

1982 WL 189307 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1982

*1 Calvin L. Stewart
Director
Analysis and Examinations
Market Conduct Division
State of South Carolina
Department of Insurance
2711 Middleburg Drive
Post Office Box 4067
Columbia, South Carolina 29240

Dear Mr. Stewart:

In a letter to this office you requested an opinion as to whether or not the South Carolina Patients' Compensation Fund (hereinafter 'the PCF') would protect its members against medical malpractice judgments in excess of One Hundred Thousand Dollars (\$100,000.00) per claim and Three Hundred Thousand Dollars (\$300,000.00) in the aggregate for one year. I assume you are questioning the extent to which the PCF would function to provide protection against such judgments.

Section 38-59-120 of the 1976 Code of Laws, as amended, provides that:

'there is created a South Carolina Patients' Compensation Fund (fund) for the purpose of paying that portion of any medical malpractice claim, settlement or judgment which is in excess of one hundred thousand dollars per incident or in excess of three hundred thousand dollars in the aggregate for one year.'

Section 38-59-180(3) of the 1976 Code of Laws, as amended, states:

'a person who has recovered a final judgment or a settlement approved by the Board against a provider covered by the fund may file a claim with the Board to recover that portion of such judgment or settlement which is in excess of one hundred thousand dollars or three hundred thousand dollars in the aggregate for one year. In the event the fund incurs liability exceeding one hundred thousand dollars to any person under a single occurrence the fund may not pay more than one hundred thousand dollars per year until the claim has been paid in full; provided, that in its discretion the Board may pay an amount in excess of one hundred thousand dollars so as to avoid the payment of interest.'

An earlier opinion of this office dated January 16, 1978, a copy of which is enclosed, concerned the question of whether the statutory provisions establishing the PCF, §§ 38-59-110, et seq. of the 1976 Code of laws, as amended, limited traditional judgment creditor's rights to enforce a judgment. The opinion determined that §§ 38-59-110, et seq. do not limit a judgment creditor to such provisions as the sole means of enforcing a judgment. The opinion stated that:

'since a judgment creditor is not required or forced to file a claim with the fund, it would appear that he is given the option of resorting to other remedies which may be available to enforce a judgment.'

Referencing the above, it cannot be stated that the PCF would function to provide absolute protection as to judgments recovered against a provider covered by the fund. As stated, a judgment creditor is not limited to the PCF as the only means in which a judgment may be enforced. Furthermore, in examining the reliance that may be placed upon the PCF for

protection, consideration must be given to the statutory provision limiting an annual pay out of One Hundred Thousand Dollars (\$100,000.00) per claim, unless the Board of the PCF in its discretion decides to pay more, and the limits of the reserves of the PCF itself.

*2 If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Assistant Attorney General

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